## UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Alexandria Division

NATIONAL COUNCIL FOR ADOPTION, BUILDING ARIZONA FAMILIES on behalf of itself and its birth-parent clients, birth parents D.V. and N.L., and baby boy T.W. by and through his guardian ad litem PHILIP (JAY) MCCARTHY, JR.,	) ) ) Civil Action No. 1:15cv00675 )
Plaintiffs,	)
v.	)
SALLY JEWELL, in her official capacity as Secretary of the United States Department of the Interior, KEVIN WASHBURN, in his official capacity as Assistant Secretary of Indian Affairs, BUREAU OF INDIAN AFFAIRS, and the UNITED STATES DEPARTMENT OF THE INTERIOR,	) ) ) ) ) ) ) ) )
Defendants.	) ) )

## <u>DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER</u> <u>JURISDICTION AND FOR JUDGMENT ON THE PLEADINGS</u>

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(c), and Local Rule 7,

Defendants, through their undersigned counsel, respectfully move this Court to dismiss the

Complaint in its entirety, or for judgment on the pleadings. The grounds for this motion are set forth in the memorandum of law in support of the motion, which has been filed simultaneously with the motion itself.

In this respect, Defendants have already presented their argument against Count I of the Complaint in their Memorandum of Law in Opposition to Plaintiffs' Motion for Partial Summary Judgment ("Opposition"). ECF No. 48 at 15, 20-30. That argument is summarized in the

present memorandum, and Defendants now respectfully and formally move this Court to dismiss Count I with prejudice for the reasons set forth in the memorandum, and as referenced therein, for the reasons set forth in the Opposition.

WHEREFORE, Defendants respectfully request that this Court dismiss the Complaint or enter judgment on the pleadings.

Respectfully submitted,

JOHN C. CRUDEN

Assistant Attorney General

**Environment and Natural Resources Division** 

United States Department of Justice

DANA J. BOENTE United States Attorney

By: /s/

DENNIS C. BARGHAAN, JR.

Assistant U.S. Attorney 2100 Jamieson Avenue Alexandria, Virginia 22314 Telephone: (703) 299-3891

Fax: (703) 299-3983

Email: dennis.barghaan@usdoj.gov

Of Counsel:

REBEKAH KRISPINSKY JOANN KINTZ

Assistant Solicitor
United States Department of the Interior
United States Department of the Interior
CHRISTINE W. ENNIS
Law and Policy Section

Environment and Natural Resources Div. United States Department of Justice

P.O. Box 44378

Washington, D.C. 20026

 $Email: \underline{steven.miskinis@usdoj.gov}$ 

Telephone: (202) 305-0262

Fax: (202) 305-0275

DATE: September 11, 2015 ATTORNEYS FOR DEFENDANTS

## **CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing ("NEF") to the following:

Jacob Stephen Siler Gibson Dunn & Crutcher LLP (DC) 1050 Connecticut Avenue N.W., Suite 300 Washington, DC 20036

Email: Jsiler@gibsondunn.com

<u>Date</u>: September 11, 2015 /s/

DENNIS C. BARGHAAN, JR. Assistant U.S. Attorney 2100 Jamieson Avenue Alexandria, Virginia 22314 Telephone: (703) 299-3891

Fax: (703) 299-3983

Email: dennis.barghaan@usdoj.gov

ATTORNEYS FOR DEFENDANTS